



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: Continental Transport & Moving, Inc.

File: B-280612

Date: October 26, 1998

Michael Nolan for the protester.

Dennis J. Gallagher, Esq., Department of State, for the agency.

Christina Sklarew, Esq., and Paul Lieberman, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Agency is not required to publicly display notice of procurement conducted under simplified acquisition procedures where the proposed contract action is not expected to exceed \$10,000; in addition, in procurement of this size, solicitation of at least three sources properly may be considered to promote competition to the maximum extent practicable.

DECISION

Continental Transport & Moving, Inc. protests the Department of State's failure to solicit an offer from this firm for packing and shipping the household and personal effects of an embassy employee in Almaty, Kazakstan under purchase order No. S-KZ100-98-M-0390. Continental essentially contends that the contracting officer failed to provide proper notice of the solicitation and improperly excluded Continental from competition.

We deny the protest.

On July 6, 1998, the agency requested "packing-out" estimates from three firms, Interdean, Calenberg, and Globalink, for the effects of a departing foreign service officer who was being transferred from Kazakstan to La Paz, Bolivia. Although the embassy had previously issued similar purchase orders to Continental, it did not request an estimate from the protester for this move. Interdean and Calenberg submitted written price estimates, and the contracting officer determined that the purchase order should be placed with Calenberg, which submitted the low quote.

Continental argues that the embassy was required to maintain a small purchases source list and to solicit bids from firms on the list "whenever offers are being accepted." Protest at 1. The protester also contends that the agency was required to post a public notice of the solicitation, but failed to do so.

Continental's arguments are without merit. While the protester argues that full and open competition is required, the solicitation was subject to the simplified acquisition procedures set forth in Part 13 of the Federal Acquisition Regulation (FAR) and therefore required only competition to the "maximum extent practicable." 41 U.S.C.A. § 253(g)(4) (West Supp. 1998); FAR § 13.104 (FAC 97-03, Feb. 9, 1998); see Lifeline Ambulance Servs., Inc., B-277415, Sept. 22, 1997, 97-2 CPD ¶ 83 at 2. FAR § 13.104(b) provides that if a synopsis is not required (e.g., the acquisition does not exceed \$25,000 or an exemption to the synopsis requirement applies) and the Federal Acquisition Computer Network is not being used, solicitation of at least three sources generally may be considered to promote competition to the maximum extent practicable. Further, this provision allows for rotating the opportunity to bid, stating that "[w]henever practicable," the contracting officer is to "request quotations or offers from two sources not included in the previous solicitation." FAR § 13.104(b). The agency complied with this requirement, selecting three firms from its list of six local packing and freight forwarding companies, including two sources not included in the previous solicitation.

To determine whether public display and synopsis requirements apply to a proposed purchase under simplified procedures, FAR § 13.104(b) refers to FAR §§ 5.101 and 5.202. Under FAR § 5.101(2), agencies are required to publicly display a solicitation where the proposed contract action is expected to exceed \$10,000 but not expected to exceed \$25,000. Here, the agency states that it did not expect this procurement to exceed the \$10,000 threshold and thus determined that the display requirement did not apply. In fact, the purchase order was placed at a price below the \$10,000 threshold. Under the circumstances presented here, the agency was not required to post a notice of the solicitation, and it satisfied the requirement for competition by requesting estimates from three firms.

In its comments on the agency report, Continental raises a number of new objections to the purchase order that was placed with Calenberg, challenging such matters as whether the firm has appropriate licensing, whether the written estimate was submitted in the proper form, whether the estimate was based on an accurate total weight for the shipment, and other challenges to the form of each of the submitted price quotations. None of these issues states a valid basis for protest, as discussed below.

As distinguished from the rigid rules applicable to sealed bidding, the simplified acquisition procedures allow a more flexible approach, suggesting innovative approaches and encouraging agencies to make purchases in the simplified manner that is most suitable, efficient, and economical based on the circumstances of each acquisition, FAR § 13.003(h) (FAC 97-03). We find no support in the FAR for any of Continental's challenges to the form in which prices were quoted. FAR § 13.106-3(b) provides that documentation for this type of purchase should be kept to a minimum; where written solicitations are used, written records of solicitations/offers may be limited to notes or abstracts to show prices, delivery,

references to printed price lists used, the supplier or suppliers contacted, and other pertinent data.

Regarding Continental's allegation that neither Interdean nor Calenberg "are properly registered or licensed to conduct business in Almaty or Kazakstan," Protest Comments at 3, we assume that Continental is questioning the responsibility of these firms, rather than alleging a failure to meet any specific requirement since there is no solicitation licensing requirement in this case. However, an agency's affirmative determination of a contractor's responsibility will not be reviewed by our Office absent a showing of possible bad faith on the part of procurement officials, or that definitive responsibility criteria in the solicitation may have been misapplied. 4 C.F.R. § 21.5(c) (1998); King-Fisher Co., B-236687.2, Feb. 12, 1990, 90-1 CPD ¶ 177 at 2. Where, as here, there is no such showing, we have no basis to review the protest.

The protest is denied.

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of the United States